

The Gazette of India

EXTRAORDINARY

PART I—Section 1

PUBLISHED BY AUTHORITY

No. 464] NEW DELHI, SATURDAY, NOVEMBER 15, 1952

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, 15th November, 1952

No. 19/250/52-Elec. III.—Whereas the election of Shri Bhatewara Maniklal Amolakchand, of No. 972, Boharpatti, Nasik, Bombay State, as a member of the Legislative Council of Bombay State from the Nasik Local Authorities constituency of that Council, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Thete Gopal Ramji of Girnare, Taluka Nasik District Nasik, Bombay State;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition, has in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order on the said Election Petition;

Now, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION NO. 250 OF 1952.

CORAM:

Chairman.

Shri V. A. Naik, B.A. (Hons.) LL.B.

Members

Shri R. R. Karnik, B.A. (Hons.) LL.B.

Shri L. P. Pendse, B.A. LL.B.

In the matter of the Representation of the People Act, 1951,

and

In the matter of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951,

and

In the matter of the Election Petition presented thereunder by Shri Thete Gopal Ramji.

Thete Gopal Ramji, a Hindu by religion Agriculturist by profession, aged about 45, residing at Girnare, Taluka Nasik, District Nasik, Bombay State.—
Petitioner.

Versus

1. Bhatewara Maniklal Amolakchand, a Jain by religion, Pleader by Profession aged about 41 and residing at House No. 972, Bohorpatti Nasik, Taluka Nasik, District Nasik,
2. Kale Vithal Shriram, a Hindu by religion, Pleader by Profession, aged about 45 and residing in Municipal House No. 205, Bhave Lane at Sinnar, Taluka Sinnar, District Nasik,
3. Patil Wamanrao Govindrao, a Hindu by religion, agriculturist by profession, aged about 52, residing at the village Sakore, Taluka Nandgaon, District Nasik.—
Respondents.

JUDGMENT. (Per Shri V. A. Naik, Chairman)

This is a petition under Section 81 of the Representation of the People Act, 1951, for a declaration that the election to the Nasik Local Authorities' Constituency is wholly void.

2. The material facts may be briefly stated as follows. The Nasik Local Authorities Constituency is one of the constituencies of the Legislative Council to the State of Bombay and one seat has been allotted to this Constituency. The electorate of this constituency consists of members of Municipalities, District Local Boards and Cantonment Boards in the Nasik District. An electoral roll of this constituency has been duly prepared as laid down by Section 27 of the Representation of the People Act, 1950. The Government of Bombay had appointed 29th February 1952 as the last date for putting in nomination papers and 1st March 1952 as the date for the scrutiny of the nominations. The Petitioner and Respondents Nos. 1 to 3 presented their nomination papers on 29th February 1952 before Mr. M. D. Rajpal, the then Collector of Nasik, who was appointed as the Returning Officer for the Local Authorities Constituency. Ex. 40 is the nomination paper presented by Respondent No. 1, Ex. 41 that by Respondent No. 2, Ex. 42 that by Respondent No. 3 and Ex. 43 that by the Petitioner. Mr. Rajpal made endorsements below the four nomination papers stating that they were presented before him and mentioning the time of their presentation. It appears that Mr. Rajpal did not examine the nomination papers on the day they were presented as required by sub-Section (5) of Section 33 of the Representation of People Act, 1951. On 1st March 1952 Mr. Rajpal held the scrutiny of the four nomination papers in the presence of the Petitioner and Respondents Nos. 1 and 3. Respondent No. 3 being absent. Respondent No. 1 submitted his objections in writing, which were common to all the three nomination papers (Ex. 45). In effect Respondent No. 1 contended that the nomination papers of the Petitioner and Respondents Nos. 2 and 3 were bad inasmuch as in items 7 and 8 of the nomination papers the candidates had not mentioned the name of the Assembly Constituency and their serial numbers in the electoral roll of that constituency. Mr. Rajpal then asked the Petitioner and Respondent No. 3 to give their reply to the objections raised by Respondent No. 1. He noted down the substance of the replies given by the two candidates on a paper (Ex. 46). The Petitioner and Respondent No. 3 in effect stated that they had mentioned in the nomination papers the name of the constituency for which they were standing for election and their numbers in the electoral roll for that constituency. After further inquiry the Returning Officer came to the conclusion that as the candidates had not mentioned the name of the Assembly constituency and their numbers in the electoral roll for the Assembly constituency in items 7 and 8 it was not possible for him to say whether they were qualified or not for contesting the election. Consequently he passed orders rejecting the nomination papers for the reasons recorded by him on separate papers (Exs. 41-A, 42-A and 43-A). The reasons given by the Returning Officer for rejecting the nomination paper of the Petitioner are at Ex. 43-A in which the Returning Officer has noted that "the Petitioner could not even furnish details with regard to himself in respect of the Assembly constituency in which his name is included." He also observed, "It is significant and I wish to have it on record that he asked for no time even to rebut the objections". As the three nomination papers were rejected and that of Respondent No. 1 was accepted, the Returning Officer declared Respondent No. 1 to be duly elected to fill the seat for the Nasik Local Authorities' Constituency of the Bombay Legislative Council. The Publication of the result

of the election was made on 15th April 1952 in the Bombay Government Extraordinary Gazette. The notice that the return of election expenses was lodged was published in the Government Gazette, on 24th April 1952. The Petitioner sent the Petition by post on 6th May 1952 and the Petition was received by the Election Commission on 8th May 1952.

3. In substance the Petitioner contends that the term "constituency" occurring at different places in the nomination paper means and refers to the Nasik Local Authorities' Constituency of the Bombay Legislative Council and that therefore the Petitioner has properly filled the items Nos. 1, 7 and 8 of the nomination paper. He further alleged that he was an elector of the Assembly constituency and his name appeared in the Nasik-cum-Igatpuri constituency of the Bombay Legislative Assembly in the list of voters of the village Girnare in the Nasik Taluka of the Nasik District and that he did not understand that the Returning Officer wanted information on this point. He also submitted that the defects pointed by the Returning Officer were technical defects which are not of a substantial character but are in the nature of clerical errors. He also contended that inasmuch as the name of Respondent No. 1 was not registered in the electoral roll of the Nasik Local Authorities Constituency of the Bombay Legislative Council Respondent No. 1 was not qualified to contest the seat assigned for the Local Authorities Constituency and that his nomination paper was improperly accepted because he had not mentioned his number in the electoral roll of the Local Authorities Constituency.

4. Respondent No. 1 put in his written statement at Ex. 14. He contended that the nomination paper of the Petitioner failed to comply with the provisions of Section 33 of the Representation of the People Act, 1951 and therefore was properly rejected by the Returning Officer. He submitted that it was essential for the Petitioner to state the name of the Assembly constituency in item No. 7 and his serial number in the electoral roll of that constituency in item No. 8. He submitted that these defects were not technical defects but were defects of a substantial character. He asserted that his nomination paper was rightly accepted by the Returning Officer because he had properly filled in the details in items Nos. 7 and 8 of the nomination paper by mentioning the assembly constituency and his serial number in the electoral roll of that constituency.

5. Respondent No. 2 put in his written statement at Ex. 15 and adopted the contentions of the Petitioner. Respondent No. 3 remained absent though duly served.

6. The following Issues were framed at Ex. 20:

1. Is not the Petition in time?
2. If not, has the Tribunal jurisdiction to decide the question of limitation?
3. Does the Petitioner prove that his nomination paper was improperly rejected?
4. Is Respondent No. 1 qualified to contest the seat assigned for the Local Authorities Constituency in view of the fact that he is not a voter in that constituency?
5. Does the Petitioner prove that the nomination paper of Respondent No. 1 was improperly accepted?

6. What order?

Our findings are: It is in time; (2) The Tribunal has jurisdiction; (3) Yes; (4) Respondent No. 1 is qualified; (5) No; (6) As per below.

7. For the sake of convenience of discussion we propose to deal with Issue No. 4 first. It is contended for the Petitioner that Respondent No. 1 is not qualified to contest the seat for the Local Authorities Constituency in view of the fact that he is not an elector in that constituency. In our opinion this contention has no substance. Chapter II of the Representation of the People Act, 1951, deals with the qualifications for membership of the State Legislatures. Section 6 of that Act provides:

"A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by election unless he is an elector for any assembly constituency in that State."

It is therefore clear that the only qualification for filling a seat in the Legislative Council is that the person should be an elector for any assembly constituency in the State. Respondent No. 1 is an elector for the Nasik-Igatpuri Assembly Constituency. His name is entered at serial number 2983 of the Electoral roll for

Ward No. 3, Part A, of the Nasik Municipality. Nowhere has it been laid down that in order to be eligible to stand for a seat in the Legislative Council, the candidate's name must appear in the electoral roll for a special constituency, such as the Local Authorities Constituency.

8. The answer to Issue No. 5 largely depends upon the answer to Issue No. 4. But there are other aspects which have to be taken into account before recording a finding on that issue and those aspects are connected with Issue No. 3. Therefore we propose to deal with Issue No. 3 which is the central Issue in this case.

9. Issue No. 3 runs as follows:

"Does the Petitioner prove that his nomination paper was improperly rejected?"

Section 33 of the Representation of the People Act 1951, provides for the requirements of a valid nomination and the manner of the presentation of the nomination paper. Sub-section (1) lays down that the nomination paper "completed in the prescribed form" must be delivered before the Returning Officer at the appointed time. Rule 4 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, prescribes the form specified in Schedule II. The form is of a general character and is applicable to all the elections, namely election to the two Houses of Parliament as also the two Houses of the State Legislature, namely the Legislative Council and the Legislative Assembly. Item No. 1 relates to the name of the Constituency seat for which the candidate stands. Item N runs as follows:

"Constituency in the electoral roll of which the name of the candidate is included".

Item No. 8 runs as follows:

"Serial number of the candidate in the electoral roll of the constituency in which his name is included".

10. The Petitioner filled items Nos. 7 and 8 as follows respectively:

"The Nasik Local Authorities Constituency for the Bombay Legislative Council".

"12"

(*vide Exhibit 43*). The two other candidates, namely respondents Nos. 2 and 3 also mentioned the same details in items Nos. 7 and 8 of their respective nomination papers (*vide Exhibits 41 and 42*). None of these three candidates mentioned his electoral roll number from the assembly constituency.

11. Sub-section (5) of Section 33 lays down the procedure which the Returning Officer has got to follow on the presentation of a nomination paper. That Sub-section enjoins a duty upon the Returning Officer "to satisfy himself that the names and electoral roll numbers of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral rolls". So far as the names and electoral roll numbers of the proposers and seconders are concerned there is no dispute that they are correctly mentioned in all the four nomination papers. So that under Sub-section (5) all that the Returning Officer in the present case was required to do was to satisfy himself that the names and electoral roll numbers of the candidates were the same as those entered in the electoral rolls. It appears from the nomination papers that all that the Returning Officer Mr. Rajpal did was to make an endorsement below the nomination papers stating that they were presented at a particular time on 29th February 1952. It is evident on the face of the nomination papers and on the evidence of Mr. Rajpal that he did not do anything beyond making an endorsement of presentation on that day. It was the duty of Mr. Rajpal under Sub-section (5) to verify the names and electoral roll numbers of the candidates and their proposers and seconders from the electoral rolls as laid down by Sub-section (5). That the duty cast upon the Returning Officer by Sub-section (5) is not merely of a formal character is clear from the proviso to that Sub-section which empowers him to permit a clerical error in the nomination paper in regard to the names or numbers to be corrected in order to bring the nomination paper in conformity with the corresponding entries in the electoral rolls.

12. Sub-section (6) is very important and it reads as follows:

"If at the time of the presentation of the nomination paper the Returning Officer finds that the name of the candidate is not registered in the electoral roll of the constituency for which he is the Returning Officer,

he shall for the purposes of Sub-section (5) require the person presenting the nomination paper to produce either a copy of the electoral roll in which the name of the candidate is included or a certified copy of the relevant entries in such roll."

In the present case Mr. Rajpal was the Returning Officer for the Nasik Local Authorities Constituency of the Bombay Legislative Council. As such Returning Officer he is expected to have the electoral roll of that constituency. Now Sub-section (6) enjoins that if the Returning Officer finds that the name of the candidate is not registered in the electoral roll of the Local Authorities Constituency he should call upon the person presenting the nomination paper to produce a copy of the electoral roll in which his name is included. Reading Sub-sections (5) and (6) together it is plain that so far as the candidate is concerned the Returning Officer must satisfy himself that his name is either registered in the electoral roll of the constituency for which he is a Returning Officer or "any other electoral roll in which his name is included." Presumably the latter roll means the roll for the assembly constituency.

13. To sum up the position, as it appears to us, under Section 33 the Returning Officer is expected to do the work of verification; in the first place, he must satisfy himself that the names and electoral roll numbers of the candidate and his proposer and seconder are the same as those entered in the electoral rolls; if he finds that there is a clerical error he should permit the nomination paper to be corrected; he must further satisfy himself that if the name of the candidate is not registered in the electoral roll of the constituency for which he is the Returning Officer he should call upon the person presenting the nomination paper to produce a copy of the electoral roll in which his name is included. The function to be performed by the Returning Officer under Section 33 is more or less of a ministerial character. We will have to advert to the provisions of Sub-sections (5) and (6) of Section 33 at a later stage but before doing that it is necessary to consider the scope of the scrutiny of the nominations provided in Section 36.

14. As pointed out above, Mr. Rajpal did not carry out the work of what can be called verification (for want of a better term) under Section 33(5) and (6). But it is common ground that on 1st March 1952 he held the scrutiny of the nominations as required by Section 36. Respondent No. 1 had submitted his objections in writing to all the three nomination papers of his rival candidates. Those objections are at Exhibit 45. The sum and substance of these objections was that the nomination papers were not properly filled in as much as the candidates did not mention their electoral roll numbers of the assembly constituency in columns 7 and 8. In other words, his objection related to the form of the nomination paper. At no time he contended that the petitioner was not an elector to the Legislative Assembly or that his name did not appear in the electoral roll for the Legislative Assembly. In this back ground let us now consider the provisions of Sub-section (2) of Section 36 which lays down (*inter alia*):

"The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination, and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, refuse any nomination on any of the following grounds:

- (a) that the candidate is not qualified to be chosen to fill the seat under the Constitution of this Act; or
- (b); or
- (c); or
- (d) that there has been any failure to comply with any of the provisions of Section 33 or Section 34; or
- (e)

It would be at once noticed that the objection of respondent No. 1 was grounded on clause (d) of Sub-section (2), namely that there has been a failure to comply with the provisions of Section 33 and not on clause (a) which deals with the qualification of the candidate to be chosen to fill the seat. It is true that the inquiry need not be restricted to the objections put forward as is clear from the words in Sub-section (2) of Section 36 "and may either on such objection or on his own motion." These words make it clear that it is open to the Returning Officer to consider any question *suo moto* although it is not raised by any one. It was therefore open to the Returning Officer to inquire into the question as to whether the candidates were or were not qualified to be chosen to fill the seat for which they proposed to stand. Sub-section (2) suggests the holding of a summary

inquiry by the Returning Officer. We have used the word "suggests" advisedly because the inquiry is not obligatory as is clear from the words "if any" after the words "after such inquiry". But in most cases an inquiry would not only be desirable but would be necessary; for instance in a case where no objection has been raised but the Returning Officer himself feels doubt, he will have to hold an inquiry into the matter and give an opportunity to the candidate to satisfy the Returning Officer about his eligibility. The scope of the inquiry is entirely left to the discretion of the Returning Officer. Although this is so, it is clear to our minds that in holding the scrutiny of the nominations and accepting or rejecting the nomination papers, the Returning Officer is exercising quasi-judicial functions.

15. Now let us see what the Returning Officer has done in the present case. He had before him the written objections put in by Respondent No. 1 (Exhibit 45). He started an inquiry on the basis of those objections. But it is clear from the evidence and the decision given by him that he went beyond the scope of the objections in holding the inquiry. The main reason for the rejection of the nomination paper as given by Mr. Rajpal is as follows:

"I cannot therefore decide from the information furnished whether he is qualified to fill the seat. I therefore reject his paper".

In his deposition Mr. Rajpal has stated that he asked the petitioner and the other candidates as to whether their names were entered in the electoral roll for the assembly constituency. From this it is clear that what the Returning Officer was inquiring into was not merely the question regarding the failure to comply with the prescribed form for the nomination paper but also the question as to whether the candidates were or were not qualified to be chosen to fill the seat they proposed to contest. It is significant to note that Mr. Rajpal has nowhere said in his order rejecting the nomination paper of the petitioner that the latter failed to comply with the provisions of Section 33 or that he did not properly fill in items Nos. 7 and 8 of the nomination paper. In our opinion, the two questions, namely the one relating to the candidate's qualification to be chosen to fill the seat and the other relating to the failure to comply with the provisions regarding the nomination paper, are distinct and have to be separately considered. For the first comes under ground No. (a) and the second falls under ground No. (d) of Sub-section (2) of Section 36.

16. Although the nomination paper of the petitioner was not rejected on the express ground of his failure to comply with the provisions relating to the nomination paper, that was the main ground on which the nomination paper was objected to by respondent No. 1 and that is also the main ground on which the petition has been contested by respondent No. 1 before us. It is therefore necessary for us to see as to whether in fact there has been a failure on the part of the petitioner in complying with the provisions relating to the nomination paper. We have already referred to the items Nos. 7 and 8 of the prescribed form of the nomination paper and the manner in which information has been supplied by the petitioner in those respects. It is contended for respondent No. 1 that the word "constituency" as appearing in columns 7 and 8 has reference to the Assembly Constituency and has nothing to do with either the Council Constituency or the special constituency from which the seat was being contested, namely the Local Authorities' Constituency. In support of this contention Mr. Pardiwala raised a number of points.

17. It is common ground that item No. 1 relates to the constituency for which the seat was being contested. In other words, in the present case it is the Local Authorities' Constituency. Mr. Gadgil for the petitioner argued that the word constituency wherever it occurs in the nomination paper must be given the same meaning. He contended that to give different meanings to the same term used in the same form is opposed to the accepted canons of interpretation. Mr. Pardiwala, the learned counsel for respondent No. 1 argued that the word 'constituency' used in items Nos. 7 and 8 means the assembly constituency whereas the word 'constituency' used in items 10 and 14 means the constituency for the local authorities. In support of this argument he relied upon the absence of article "the" before the word constituency in column 7 and its presence before the same word in items 10 and 14 and also the difference in the language between the wording in items 7 and 8 on the one hand and items 10 and 14 on the other. We must concede that there is a good deal of force in the argument advanced by Mr. Pardiwala. At the same time we cannot help observing that the form is vague and not free from ambiguity. The vagueness might in part have been due to the fact that the form is general and is intended to apply to elections to all legislative bodies, namely the two houses of Parliament and the two houses of the State Legislature. It is impossible even for a lawyer to gather from a reading of the form itself as to what is the exact

meaning of the word constituency as used in items 7 and 8. Mr. Pardiwala had to argue the point elaborately and had to refer to various sections of the Representation of the People Act and the Constitution in order to impress upon our mind that the word 'constituency' has been used in different senses in columns 7 and 8 and in columns 10 and 14. The ordinary rule is that the same word is used in the same sense in one document or one section. There is no reason why a common man (and a candidate need not be anything more than a common man) should depart from the ordinary canons of construction and think that the word 'constituency' has been used in different senses in different parts of the same document. Sub-section (6) of Section 33 to which a reference has already been made requires the Returning Officer to see that the name of the candidate is registered in the electoral roll of the constituency for which he is the Returning Officer and when he finds that his name does not find place in that roll he is expected to call upon the person presenting the nomination paper to produce a copy of the electoral roll in which his name is included. This suggests that the Returning Officer normally is not expected to go beyond the electoral roll of the constituency for which he is the Returning Officer. The central point of his inquiry on the presentation of the nomination paper is to see whether the name of the candidate appears in the electoral roll of the constituency for which he is the Returning Officer. On the interpretation which Mr. Pardiwala seeks to put upon the words used in items 7 and 8 it is not only not necessary for the candidate to mention the electoral roll numbers of the Local Authorities' constituency at all but it is not open to him to do so. If that argument is true then the first part of Sub-section (6) of Section 33 is rendered entirely nugatory because the inquiry by the Returning Officer to see whether the name of the candidate appeared in the electoral roll of the constituency for which he is the Returning Officer becomes idle and fruitless.

18. Secondly, Mr. Pardiwala relied upon the wording of Sub-section (5) of Section 33 which runs as follows:—

"On the presentation of a nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and the proposer and seconder as entered in the nomination paper are the same as those entered in the electoral rolls."

Mr. Pardiwala argued that inasmuch as the plural word 'rolls' is used, it is clear that two distinct rolls are contemplated, namely the Assembly roll in which the name of the candidate is entered and the roll for the special constituency in which the names of the proposer and seconder are included. He amplified this argument by laying his finger upon the wording of items 10 and 14 and the provisions of Sub-section (2) of Section 33. It is clear from the wording of Sub-section (2) of Section 33 that a person whose name is registered in the electoral roll of the special constituency alone is entitled to propose or second the nomination paper. In other words, the qualification of a proposer and seconder lies in the fact that his name is entered in the electoral roll of the special constituency. That is not however the qualification laid down for the candidate to become eligible for contesting a seat to a special constituency. As stated above, the only qualification required by the candidate is the fact that he is an elector to an assembly constituency. Mr. Pardiwala therefore argued that when the plural word 'rolls' is used in Sub-section (5) it means that two rolls are contemplated, namely the assembly roll and the special constituency roll. As we would point out at a later stage this argument, and in fact the entire argument of Mr. Pardiwala, is the result of a confusion between the qualification of a candidate to contest a seat and the requirements of a nomination paper. The word 'rolls' used in Sub-section (5) may mean the two rolls, namely the assembly roll and the special constituency roll. It may as well mean the roll for more than one constituencies for the Legislative Assembly, because it is open to a man whose name is entered in one constituency to contest a seat in another constituency.

19. The third ground in support of his argument was based on the special definition of the word 'constituency' contained in Section 19 of the Representation of the People Act, 1951, which lays down that for the purposes of Part IV and V 'constituency' means a Council of States Constituency or a parliamentary constituency or an Assembly constituency or a Council constituency. Mr. Pardiwala pointed out that the form of the nomination paper is based on rule 4 and therefore forms part of the provisions of Part V to which the special definition contained in Section 19 applies. He argued that the word 'constituency' used in items 7 and 8 means Council constituency and Council constituency is the same as Assembly constituency and therefore it follows that items Nos. 7 and 8 refer to the Assembly constituency and the electoral roll number of that constituency. This argument is obviously illogical. If Council constituency and Assembly constituency are

the same entities for the purposes of Part IV and V there was no necessity for the Legislature to mention them separately. It has also to be remembered that the definition contained in Section 19 is qualified by the words "unless the context otherwise requires". Therefore, on reading the word 'constituency' in the context of the form, which was filled by the four candidates in the present case, we shall have to come to the conclusion that the word 'constituency' is used in the sense of a Council constituency. In this connection we may refer to the definition contained in Sub-section (2) of Section 2 of the Representation of the People Act, 1951, (relating to the interpretation of the words used in the Act) which says that for the purposes of this Act a Council of States constituency, a Parliament constituency, an Assembly constituency, a Council constituency, a local Authorities' constituency, a graduates' constituency, and a teachers' constituency, shall each be treated as a constituency of a different class. A Local Authorities' Constituency, therefore, is a constituency of a different class. Reading this definition in the light of the wording of Section 19 it is possible to argue that the word 'constituency' used in the form means the Local Authorities' constituency in all the items and no other constituency.

20. Fourthly, Mr. Pardiwala emphasized that inasmuch as a person who is not an elector in the Local Authorities' constituency but only an elector in the Assembly Constituency can contest a seat for the Local Authorities' constituency, it is clear that the only information which he can supply in items 7 and 8 must necessarily relate to the Assembly constituency in the electoral roll of which his name stands and the roll number thereof. He argued that the information required to be filled in columns 7 and 8 must necessarily be the same whether the candidate contesting the seat is an elector in the special constituency roll or is only an elector on the Assembly constituency roll; it is a matter of coincidence that the petitioner and the other two candidates are also electors in the Local Authorities' constituency but that is no ground for holding that the information to be supplied by them would be different from that to be supplied by a candidate whose name only appears on the electoral roll of an Assembly constituency, as in the case of Respondent No. 1. This argument is not without force. But as pointed out above, it does appear from the wording of Section 33(6) that in the first instance the Returning Officer is expected to see whether the name of the candidate appears in the electoral roll of the constituency for which he is the Returning Officer and failing that he is to make inquiries as to whether his name appears in any other roll. This leads to an inference that what is required to be prominently mentioned is the electoral roll number of the constituency from which the seat is being contested. If the candidate however is not on that electoral roll he may and he can mention the roll of the constituency in which his name appears and its number. That means that the nomination paper of respondent No. 1 was in order although in columns Nos. 7 and 8 he merely stated the Assembly Constituency in the electoral roll of which his name stood and its number. It does not however follow that the nomination papers of the petitioner and respondents nos. 2 and 3 were not in order merely because they mentioned their names in the electoral rolls of the Local Authorities' constituency and the numbers on that roll. They could have also mentioned the name of the Assembly constituency in which their names appeared and their numbers on that roll in addition.

21. The most important and fundamental point to be remembered is that after all the mention of the fact that the candidate is an elector in an Assembly constituency has reference to the qualification of the candidate to contest the election because under section 6 of the Representation of the People Act, the eligibility of a candidate to fill a seat in the Legislative Assembly depends upon whether he is an elector for an Assembly constituency. The main question to be considered is whether it is necessary to mention facts in the nomination paper which relate to his qualification to contest a seat in the Legislative Council. The entire superstructure of the argument of Mr. Pardiwala rests upon the supposition that this is essential. In that respect Mr. Pardiwala drew our attention to the fact that there is a column in the nomination paper which requires the candidate to mention the age. He argued that this can only have reference to the qualification of the candidate because under Article 173 of the Constitution no person who is less than 30 years of age can contest a seat to the Legislative Council. It is possible that one of the objects of the nomination papers was to supply information to the Returning Officer regarding the particulars which qualify the candidate to contest the seat. But in our opinion the question of qualification does not merely rest upon the particulars mentioned in the nomination paper. It is sufficient if the nomination paper gives the details regarding the electoral roll number of the constituency for which the seat is being contested. If that is done it will be sufficient compliance with the provisions of Section 33 of the Representation of

the People Act, 1951. It is still open to the Returning Officer to consider the question as to whether the candidate possesses the qualifications laid down in the Constitution which makes him eligible to contest a seat in the particular constituency. It is not necessary to dilate on this point any more at this stage because paragraphs 23 onwards will be devoted to the discussion of this very aspect.

22. For the present the only question which we are considering is whether there has been failure on the part of the petitioner to comply with the provisions of section 33 and we are inclined to the view that it is not possible to hold in the circumstances of the case, the nature of the form and the provisions of Section 33 Sub-sections (5) and (6) that the petitioner has failed to comply with the provisions of section 33 in filling the details as against the various items in the nomination paper. As pointed out above, the Returning Officer himself has not rejected the nomination paper on the ground of its failure to comply with the provisions of section 33 although that was the ground which was put in the forefront of his objections by Respondent No. 1. In this connection we may also refer to Sub-section (4) of Section 36 which provides :

"The Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character".

In our opinion, the non-mention of the name of the Assembly constituency and the number of the candidate in that electoral roll at best is a technical defect which is not of a substantial character.

23. That bring us to a consideration of the point on which the nomination paper has come to be rejected. Under Section 38(2) (a) the Returning Officer can reject the nomination paper if he finds that the candidate is not qualified to be chosen to fill the seat under the Constitution or this Act (namely the Representation of the People Act, 1951). As pointed above, the Returning Officer in fact has not found in so many words that the petitioner was not qualified to be chosen to fill the seat. This disqualification would flow from the circumstance that his name did not appear on the electoral roll of any Assembly constituency. As a matter of fact, as stated above, it was not the case of Respondent No. 1, who put forward the objections to the nomination of the petitioner, that the latter's name was not included in the electoral roll of any Assembly constituency. Mr. Rajpal in his deposition has stated that he asked the petitioner whether he was an elector in the Assembly Constituency and whether his name appeared in its electoral roll. He however states that the petitioner gave an evasive reply to that question saying, "his name might be on the roll of the Assembly constituency". Mr Rajpal further states that he had made it clear to the candidates that unless their names appeared in the electoral rolls of an Assembly constituency they were not entitled to contest a seat from the Local Authorities' constituency. The suggestion is that in spite of this clarification the petitioner did not make a positive statement that his name stood in such roll. On the other hand, the petitioner in his deposition asserts that he positively told Mr. Rajpal that his name appeared in the electoral roll of the Assembly constituency. In order to buttress this part of the story the petitioner has stated that as a matter of fact he exercised his franchise in the general election to the Legislative Assembly for Nasik-Igatpuri constituency which took place in January 1952, that is to say a few days prior to this nomination. The statement of the petitioner has gone unchallenged in cross-examination. In view of this and further in view of the fact that according to Mr. Rajpal he made it clear to the witness that it was essential for the candidate to show that his name is included in the electoral roll of the Aessmby Constituency, on the face of it, it appears unlikely that the petitioner would give an evasive reply to the effect that his name might be on the roll. We should not be understood to mean that we disbelieve the evidence of Mr. Rajpal or cast aspersions upon his varacity or integrity. It cannot be forgotten that Mr. Rajpal was carrying on his shoulders the burden of administering a big District like Nasik. It is well-known that the duties of a Collector are manifold and onerous. In addition to these duties he was entrusted with the work of a Returning Officer. It would not be improper to assume that Mr. Rajpal was working under the storm and stress of election duties in addition to his normal duties as a Collector. Furthermore, he is giving evidence about incidents which took place more than seven months before. In these circumstances it is possible that Mr. Rajpal may not remember the very words that were used by the candidates. In any case the possibility that he or anyone in his position is likely to commit mistakes in recapitulating the version word for word cannot be excluded. That being the case, we prefer to accept the word of the petitioner when he says that he did assert before Mr. Rajpal that his name appeared on the electoral roll of the Legislative Assembly. This view is more in consonance with the probabilities of the case and the circumstance that the petitioner had exercised his franchise in the elections to the Assembly very recently.

24. A perusal of the order passed by Mr. Rajpal which is the contemporaneous record of the events fortifies our conclusion in that respect. Paragraph 3 of that order (it is not numbered as such by Mr. Rajpal but it is actually No. 3) by Mr. Rajpal runs as follows:

"Shri Thete cannot even furnish details with regard to himself in respect of the Assembly Constituency in which his name is included".

This sentence implies that Thete asserted that his name appeared in the Assembly constituency and that he was asked to furnish details regarding the same and further that he was unable to do so. We should not be supposed to be out for picking up holes and finding fault with the inquiry made by Mr. Rajpal as the Returning Officer. We accept the position that the inquiry is summary and the nature of the scope of the inquiry is entirely a matter of his discretion. At the same time when Mr. Rajpal embarked upon the inquiry as to the qualification of the petitioner, when that point was not raised by anybody and when the petitioner asserted that he was duly qualified we cannot help thinking that it was incumbent upon Mr. Rajpal to pursue the inquiry to its logical conclusion with a view to satisfy himself whether or not the petitioner possessed the necessary qualifications. In this connection we may refer to the proviso of Sub-section (5) of section 36 which empowers the Returning Officer to allow time to the candidate till the next day for rebutting the objection raised to his eligibility. Mr. Rajpal has observed in the concluding para. of the order:

"It is significant and I wish to leave on record that he asked for no time even to rebut the objection".

The petitioner asserts that he did not follow the trend of the discussion that took place at the time of the scrutiny and that he never understood the Returning Officer to ask him to supply the information regarding the details about the Assembly Constituency. The Petitioner is a half literate man. He was not accompanied by any agent. It is true that respondent No. 3 was present with his agent Raosaheb Thorat. Raosaheb Thorat has not been examined and we know nothing about the educational qualifications of either respondent No. 3 or Raosaheb Thorat. It is undisputed that the petitioner himself does not follow English. Mr. Rajpal states that the substance of the objection was explained to the candidates present in the first instance by respondent No. 1 in Marathi and later on by himself. Mr. Rajpal knows Marathi fairly well, as he himself puts it. The substance of the replies given by the petitioner and Respondent No. 3 have been noted by Mr. Rajpal in English on a separate paper (exhibit 46). The replies of the petitioner and respondent No. 3 are to the effect that in accordance with the normal practice they had given the details of their names and numbers as they appeared in the electoral roll of the constituency for which they were standing. Mr. Rajpal has candidly admitted that these replies related and were restricted to the objections raised by the respondent No. 1 and that he himself made no note of the replies given by them regarding the queries put by himself. Mr. Rajpal states, and the petitioner has also admitted, that all along the petitioner and Respondent No. 3 were asserting and maintaining that the procedure followed by them was correct. Even then it does not follow that the petitioner was disinclined to supply the information regarding the details about the Assembly Constituency if it was demanded by the Returning Officer. It is possible that the Petitioner was not ready with the details nor had he taken with him the electoral roll for the Assembly constituency in which his name was included. Indeed it appears from the order of the Returning Officer that the Petitioner was not armed with the details of that information. At the same time it is difficult to imagine that the Petitioner would not even ask for time if he correctly understood the Returning Officer and realised that he wanted particulars regarding the name and the electoral roll number of the Assembly constituency. As a matter of fact Mr. Rajpal has admitted that he had on his table the electoral roll for the Nasik-Igatpuri constituency of the Legislative Assembly. The nomination paper had mentioned the address of the petitioner. The Petitioner hailed from Girnare village. It was not therefore impossible for the Returning Officer to look into the electoral roll and find whether the name of the petitioner stood in that roll. It is true that as the number was not given the Returning Officer would have been required to make a search. But the name of the village was mentioned and therefore the search would not be beyond the capacity of the Returning Officer. We have repeatedly stressed above that the Returning Officer would have been perfectly justified in not referring to the electoral roll at all if the only question before him was whether the provisions of section 33 were complied with in filling in the details as against the various columns of the nomination paper. He could straightforwardly reject the nomination paper on the ground that it did not comply with the provisions of the form. But what the Returning Officer was trying to find out was whether the petitioner was or was not qualified to contest the seat. For that purpose he could have and in our opinion should have tried to satisfy

himself as to whether the petitioner did or did not hold the necessary qualification. Because of the peculiar character of the inquiry made by him, Mr. Rajpal himself was unable to come to a definite conclusion on the question of qualification. He had therefore to rest content with observing that he could not "decide from the information furnished whether the petitioner was qualified to fill the seat". In our opinion the finding recorded by Mr. Rajpal is not in accordance with the ground stated in clause (a) of sub-section (2) of section 36 which requires the Returning Officer to record a finding on the fact of the qualification one way or the other. It is conceded at the trial that the name of the petitioner stood in the electoral roll for the Nasik-Igatpuri Constituency of the Legislative Assembly. A certified copy of the entry of the Petitioner's name in that roll is produced at exhibit 40 which shows that his name appears at serial No. 430 of the list for the village Girnare. It is therefore clear that the Petitioner did hold the necessary qualification for contesting the seat for the Legislative Council. It is not the want of the necessary qualification which has come in the way of the acceptance of his nomination but his failure to satisfy the Returning Officer at the time of the scrutiny about his holding such qualification. It is therefore clear that ground in clause (a) of sub-section (2) of section 36 did not exist in the present case and the candidate was not held or proved not qualified to be chosen to fill the seat.

25. A number of cases were cited before us by Mr. Gadgil in support of his contention but the only one which has some relevance to the facts of this case is reported in Indian Election Petitions Volume III by Jagat Narain at page 232 (*Ramanugraha Narayan v. Sarda Prasad*). It was held in that case that it is the duty of the Returning Officer to scrutinise the nomination papers and to decide whether a candidate is eligible for being a candidate or not the Commissioners have the power to interfere when they find that the discretion vested in the Returning Officer has been improperly exercised. It is not necessary to state all the facts of that case. It is sufficient to note that some evidence was adduced before the Returning Officer for showing that the candidate's name stood on the electoral roll but the Returning Officer considered that evidence as insufficient. The Commissioners held that "there was a *prima facie* case that the Petitioner was properly qualified to stand, which the Respondent did not even attempt to rebut. The Returning Officer has to scrutinise the nomination paper himself and to decide whether the petitioner was eligible or not, but having regard to the evidence produced before him and to the papers put in before us, we think that there was an improper exercise of discretion on his part in rejecting the nomination paper".

26. In the present case also the Respondent No. 1 had never challenged the fact that the Petitioner was qualified to stand and the Petitioner's assertion in answer to the question put to him by the Returning Officer to the effect that his name stood in the electoral roll of the Assembly constituency afforded *prima facie* evidence before the Returning Officer. We have therefore come to the conclusion that the nomination paper of the Petitioner was improperly rejected by the Returning Officer.

27. Mr. Pardiwala argued that assuming it is held that the nomination of the petitioner was improperly rejected by the Returning Officer, the Petitioner has further to prove that the result of the election has been materially affected by the improper rejection of his nomination and since he has adduced no evidence in that respect the petition must fail. We are not prepared to accept this contention. The three nominations were rejected by the Returning Officer with the result that no contestant was left in the field and Respondent No. 1 was declared elected unopposed. That means in fact no voting took place at all. It is therefore self evident that the result of the election has been materially affected by the improper rejection of the three nominations. Since no polling has taken place it is impossible for the Petitioner to adduce any evidence as to what would have happened in case the election was contested. As it is, the Petitioner has stated that he was a member of the District Local Board, Nasik from 1946 upto the date of the nomination. It is an admitted fact that Respondent No. 1 is not a member of any of the local bodies the members of which form the Local Authorities' constituency. It is contended for the Petitioner that had the votes been taken he stood greater chance of winning the election than Respondent No. 1 who was not a member of any of the local bodies. Any speculative consideration apart, on a broad view of the case, we feel no hesitation in holding that the result of the election has been materially affected by the improper rejection of the nominations of the petitioner and Respondents Nos. 2 and 3.

28. The only question that now remains for consideration is the question of limitation. Clause (a) of Rule 119 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, lays down that a petition against a returned candidate be presented "not later than 14 days from the date of publication of the notice in the official Gazette under rule 113 that the return of election

expenses of such candidate and the declaration made in respect thereof have been lodged with the Returning Officer". The notice contemplated under rule 113 has been published in the Government Gazette on 24th April 1952. The petitioner sent the petition by post on 6th May 1952 and it was received by the Election Commission on 8th May 1952. If the date of the publication of the notice is excluded from the computation of the period of limitation it is obvious that the petition is in time even if the date of the receipt of the petition sent through post is considered as the date of the presentation of the petition. Section 9 of the General Clauses Act of 1897 provides, *inter alia*, "in any Central Act or Regulation made after the commencement of this Act it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from.....'". It is apparent from the introductory words of the section that the provisions contained therein must necessarily apply to all enactments passed by the Central Legislature in future. There is an express provision in sub-rule (8) of rule 2 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, to the effect that "the General Clauses Act, 1897 (X of 1897), shall apply for the interpretation of these rules as it applies for the interpretation of an Act of Parliament". It is therefore clear that the day of the publication of the notice under rule 113 must be excluded from the computation of the period of limitation. The petition therefore is obviously in time.

29. In view of this finding it is not necessary to consider the other questions raised, namely as to when the petition would be deemed to be presented when it is sent by registered post. As to issue No. 2, all that need be said is that under sub-section (4) of section 90 it is clear that the final authority to consider the question of limitation is the Tribunal.

30. The proper order as to costs in the peculiar circumstances of the case is that the parties should bear their respective costs.

ORDER

The election to the Nasik Local Authorities' Constituency is declared wholly void.

The parties to bear their respective costs.

(Sd.) V. A. NAIK,
Chairman.

I agree. (Sd.) R. R. KARNIK,
Member.

I agree (Sd.) L. P. PENDSE,
Member.

8th November, 1952.

P. S. SUBRAMANIAN, Officer on Special Duty.